

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

A.R.,

Plaintiff and Respondent,

v.

J.V.,

Defendant and Appellant.

G055705

(Super. Ct. No. 15P001427)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Franz E. Miller, Judge. Reversed and remanded with instructions.

Latham & Watkins, Andrew Gray, Allison Strittmater and Rachel Bosley for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

*

*

*

J.V. appeals from an order denying her request for a domestic violence restraining order (DVRO) under the Domestic Violence Prevention Act (DVPA; Fam. Code § 6200, et seq.¹) against A.R.² J.V. contends the trial court abused its discretion in denying her DVRO application because it summarily denied her request, despite uncontested evidence supporting the application. We agree with J.V. Accordingly, we reverse and remand the matter for further proceedings consistent with this opinion.

FACTS

J.V. represented herself in filing an application for a DVRO against A.R. In support of her application, she submitted a declaration under seal which we have reviewed.³ A.R. did not contradict or impeach J.V.'s declaration. At the hearing on the matter, the trial court denied J.V.'s application. No witnesses were called. The court failed to provide a legal or factual basis for its ruling.

DISCUSSION

J.V. contends the trial court abused its discretion when it denied her request for a DVRO. Specifically, J.V. argues her uncontradicted, unimpeached declaration was

¹ All further statutory references are to the Family Code.

² A.R. did not file a brief on appeal.

³ We note the underlying record in this case is confidential under Family Code section 7643(a) as a designated paternity action. (See Cal. Rules of Court, rule 8.47(c)(1).) J.V. filed an application to seal the portions of her brief referring to this record to maintain the confidentiality of the material contained in the confidential record. We granted her request. Pursuant to California Rules of Court, rule 8.46(d)(4), J.V. filed a public version of the documents, with the references to the confidential materials redacted. Our statement of facts is necessarily abbreviated, due to the confidential nature of the record.

sufficient to issue a DVRO. Further, she contends the court's implied adverse finding as to her credibility was arbitrary and improper. We agree and reverse the court's order.⁴

Under section 6300, subdivision (a), a DVRO may be issued "if an affidavit or testimony and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300, subd. (a).) "[P]ast acts or acts of abuse" include "plac[ing] a person in reasonable apprehension of imminent serious bodily injury to that person or to another" and "engag[ing] in any behavior that has been or could be enjoined pursuant to Section 6320," which includes "disturbing the peace of the other party." (§§ 6203, 6320, subd. (a).)

We review an order denying a protective order under the DVPA for abuse of discretion. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495.) "[T]he abuse of discretion standard measures whether, given the established evidence, the lower court's action 'falls within the permissible range of options set by the legal criteria.'"
(*Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 624.)

Courts may grant a DVRO solely on the basis of a petitioner's declaration. (§ 6300, subd. (a) ["The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order."]; see also *Garcia v. Superior Court* (2007) 42 Cal.4th 63, 70, fn. 7 ["A valid declaration has the same "force and effect" as an affidavit administered under oath."].) An order denying a petition for an ex parte restraining order pursuant to section 6320 "shall" include the reasons for denying the petition. (§ 6340, subd. (b).)

⁴ Because we determine the trial court's denial of J.V.'s application for a DVRO constituted an abuse of discretion, we do not reach the merits of J.V.'s remaining arguments. We note, however, there was insufficient evidence in the record to demonstrate either that the trial court had a "pre-conceived bias" against J.V. or that the court's treatment of J.V. as a pro se litigant was sufficient to warrant reversal.

Our review is made especially difficult by the trial court’s failure to provide any explanation for its conclusion that J.V.’s factual representations were legally insufficient.⁵ J.V. submitted a declaration in support of her application. The declaration was uncontradicted and unimpeached at the hearing. Therefore, rules regarding the weight of uncontested testimony were applicable. J.V.’s declaration, “which is not inherently improbable, cannot be arbitrarily disregarded and should be accepted as true by the trier of facts where it is not found that the testimony was false.” (*La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345 (*Hopkins*).) Furthermore, a trial court may not determine the weight given to witness testimony when ““it appears that there are no matters or circumstances which at all impair its accuracy.”” (*Kurtz v. Kurtz* (1961) 189 Cal.App.2d 320, 325; see also *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204-1205 [reiterating that triers of fact may not reject witness testimony without “rational ground for doing so”] (*Beck*).) Since J.V.’s uncontested testimony was not inherently improbable, “the appellate courts must presume it was true.” (*Hopkins, supra*, 98 Cal.App.2d at 346.)

Courts of appeal generally refrain from second guessing trial court credibility assessments because a trial court judge has the opportunity to observe witnesses and “their hesitations, their doubts, their variations of language, their

⁵ The Legislature amended the DVPA in 2015 to include the requirement that a court “shall, upon denying a petition under this part, provide a brief statement of the reasons for the decision in writing or on the record. A decision stating ‘denied’ is insufficient.” (§ 6340, subd. (b).) The Legislature considered the amendment necessary in order to provide reasons for a DVRO denial that petitioners could understand, and to facilitate effective review on appeal. (Assem. Com. on Judiciary, Apr. 17, 2014 analysis of Assem. Bill No. 2089, as amended Apr. 10, 2014, p. 6 [“This bill seeks to extend this same important protective policy to orders after hearing to ensure that both petitioners and respondents, almost all of whom are unrepresented by counsel, understand why the court has made its order. Thus, the bill requires a court, upon approving or denying an order after hearing under the DVPA, to state its reasons in writing or on the record. This allows both parties to know what just happened and allows for an appeal, if necessary”].)

precipitancy, their calmness or consideration,” and “evaluate the sincerity, honesty and integrity” of those individuals. (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140-141.) Here, however, the trial court made no explicit credibility finding, but rather appeared to imply an adverse credibility finding as to J.V. The court provided no reasoning to support its apparent credibility ruling, and the uncontested evidence contradicted any potential implied findings that might support the DVRO’s denial. From the record, there were no rational or legal grounds for any implied negative credibility finding as to J.V. Therefore, any implied adverse credibility finding cannot be credited on appeal. (*Beck, supra*, 44 Cal.App.4th at p. 1205.)

J.V.’s DVRO application materials cannot “be arbitrarily disregarded.” (*Hopkins, supra*, 98 Cal.App.2d at p. 345.) Because the only evidence in the case weighed in favor of granting J.V.’s DVRO request, the trial court’s denial of J.V.’s DVRO application without explanation constituted an abuse of discretion.

DISPOSITION

We grant J.V.’s request for judicial notice of exhibits A through C, but deny the request as to exhibits D through M.⁶ The order is reversed and remanded to the

⁶ Exhibits A through C are proper for judicial notice because they are court records from another case between the same parties. Exhibits D through M, however, are court records from the underlying case on appeal. As such, the proper procedural method of adding them to the appellate record is a motion to augment, not a request for judicial notice. (Cal. Rules of Court, rule 8.155.)

trial court with directions to issue the DVRO as sought by J.V. In the interests of justice, no costs are awarded.

GOETHALS, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.